IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6679 OF 2006

Dr. Subhash Govind Saykhedkar]
Adult, aged 45 years, Adult,]
residing at Sayali Apartment, Link Road]
Thatte Wadi, Gangapur Road, Nashik.] .. Petitioner

Versus

1. The Collector, Nashik.]

2. The Resident Deputy Collector and]
Competent Authority, Nashik]
Agglomeration, having his office]
at Nasik.]

3. The Secretary, Urban Development]
Department, Government of Maharashtra
Mantralaya, Mumbai - 400 032.]

4. Nashik Municipal Corporation,]
Nashik.]

5. The Divisional Commissioner,]
Nashik Division, Nashik.]

6. The District Sports Officer,]
Division Sports Complex, Opp: Court]
Behind Bitoo High School, Nashik.] .. Respondents

Mr. R.D. Soni with Vipin Kaole i/b M/s. Ram & Co. for the petitioner.

Mr. S.R. Nargolkar, AGP, for the respondents No.1 to 3 and 5 to 7.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 02ND APRIL, 2007

ORAL ORDER. : [Per S.B. Mhase, J.]

. Rule. With the consent of the parties, returnable forthwith.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, challenging the order dated 5th June, 2006, passed by the Principal Secretary (1), Town Planning Department bearing No.Writ 1204/P.C.256/ULCH-2. This is a revision filed under Section 34 by the petitioner to amend the order passed under Section 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter for the sake of brevity referred to as "the ULC Act"). The claim made by the petitioner was that when the order under Section 8(4) of the said Act was passed declaring 1,93,529 square meter area as a surplus, out of the said area, 83,964 area has been taken by the Government without payment of any compensation. According to the petitioner on the appointed date there were two sisters in the family viz. Suman Kulkarni and Bharti Prabhakar Dixit who were major at that time and were entitled to get units according to the provisions of the said Act. However, that benefit was not given when the order was passed. At a subsequent stage the representation being

No.7241/2004 was made to the Secretary, Urban Land Ceiling Department. That representation was not considered. This Court, by the order dated 8th December, 2004, on concession given by both side counsel, directed that the representation shall be treated as a Revision Application and the concerned authority shall afford a fair opportunity of personal hearing to the petitioner as well as to the respondent No.4 (in that Petition) and decide the same strictly on its own merit and in accordance with law on or before 20th February, 2005, and, therefore, the impugned order was passed by the respondent. However, instead of deciding the matter on merit, the matter has been disposed of on a technical ground viz. that the said application has not been preferred within a reasonable period under Section 34 of the said Act and reasonable period, according to the authority, is a period of three years from the declaration under Section 8(4) of the said Act and thus, the Revision was rejected.

3. The learned counsel for the petitioner submitted that the claim of the daughters was required to be considered in view of the Supreme Court judgment and the Government Circulars dated 23rd July, 1997 and 10th May, 1999. The learned counsel for the petitioner submitted that the objection in respect of the

limitation by invoking provisions of Section 34 cannot be raised by the respondent because in similar cases of other land holders, such objection was not raised and the corrections in the declaration under Section 8(4) were carried out by the Government and, therefore, it is submitted that the Government cannot discriminate between the two land holders whose cases are being considered under the ULC Act, 1976.

4. The learned Assistant Government Pleader vehemently opposed the Petition. He submitted that under Section 34, it is established that the application has to be preferred reasonably and within a period of three years and the present application, which was preferred in the year 2004, is not within the period of three years and has been rightly rejected. However, he could not answer our query as to how in respect of other land holders the objection in respect of Section 34 was not taken by the Government and the Notifications under Section 8(4) were modified by the Government.

5. We find that the impugned order passed by the respondent is not legal and proper. Basically, when the matter was directed to be considered as a Revision Application by this Court, the respondent was a conceding party to the said order and, therefore, the

respondent-State Government should have considered the matter on merit. Apart from that, we may refer to the Government Circular dated 23rd July, 1997. By this Circular, directions or guidelines were issued to the Commissioners/Collectors that while considering the surplus land under the ULC Act, if it is an ancestral property, then along with the major sons, the major daughters may also be considered. However, this shall be applied only in respect of the ancestral properties and not in respect of self-acquired property of the holder. The 1999 Circular has considered the Supreme Court judgment wherein the Supreme Court has considered the units of major daughters on the appointed date and, therefore, there was a demand from the land holders that the said judgment may be applied to the declarations already carried out under Section 8(4) and the amendments be carried out. Therefore, on 10th May, 1999, the Government issued the Circular No.*Najala* 1099(3953)/*Najala-1* and by this Circular the powers were given to the officers under the ULC Act viz. the Commissioners and Collectors to carry out amendments in the declaration under Sections 8, 20, and 21 considering that the holding is an ancestral holding and that there are major sons and daughters who can be considered as units. Thereby, it becomes clear that in 1999 by this Circular these officers were directed to exercise powers

under Section 34 and thereafter to carry out the amendment in orders which have been passed under Sections 8, 20 and 21 of the said Act. That means by this 1999 Circular all the officers under the ULC Act were directed to exercise powers under Section 34 and, therefore, the party who desires to take benefit of the 1997 and 1999 Circular so also the Supreme Court judgment is expected to make an application within a reasonable period thereafter. What we find is that the matter was directed to be considered by the State Government in view of the special concession given by the counsel for the Government and, therefore, it was not open for them to raise this technical ground of limitation. Apart from that we are told at the bar that even applications which are given after the period of three years by various other land holders are being considered by the Government and orders are passed by the Government on merit in their cases. This aspect has not been denied by the learned Assistant Government Pleader. What we find is that under these circumstances, we cannot tolerate a discriminatory treatment being given to the petitioner at the hands of the respondent. In the circumstances, we find that the ground raised by the respondent to say that the Revision Application has not been made within a period of three years and, therefore, the Revision is rejected is not

sustainable in law and in the facts of this case and, therefore, we are inclined to allow the Petition. We, therefore, pass the following order:

O R D E R :

(a) The Writ Petition is allowed.

(b) The impugned order dated 5th June, 2006, is quashed and set aside and the Government is hereby directed to decide the Revision Application on merit afresh, after giving hearing to the petitioner.

(c) The Revision Application shall be disposed of within a period of 8 weeks from today.

(d) Rule made absolute accordingly.

. No order as to costs.

Sd/-
[R.S. MOHITE, J.]

Sd/-
[S.B. MHASE, J.]